

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 08-11343  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPT 9, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 98-00401-CR-SH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTOINE DIXSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida

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**(September 9, 2008)**

Before MARCUS, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

Antoine Dixson appeals pro se the denial of his motion challenging the

enhancement of his sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). The district court denied Dixon’s motion. We vacate that order and remand with instructions to dismiss the motion for lack of jurisdiction.

We review de novo the subject matter jurisdiction of the district court. United States v. Moore, 443 F.3d 790, 793 (11th Cir. 2006). A district court does not have authority to modify a sentence, except to the extent provided by the federal statutory provisions that control sentencing and the Federal Rules of Criminal Procedure. 18 U.S.C. § 3582(c). We have stated that federal courts have “an obligation to look behind the label of a motion filed by a pro se inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework.” United States v. Jordan, 915 F.2d 622, 624–25 (11th Cir. 1990).

The district court correctly concluded that it lacked jurisdiction to entertain Dixon’s motion. Dixon was sentenced in 2000, filed a collateral challenge to his sentence in 2002 that was denied on the merits, 28 U.S.C. § 2255, and has not obtained permission from this Court to file a successive motion, id. § 2244(b)(3)(A). Dixon is not entitled to pursue relief under the savings clause because he did not allege in his motion that a decision of the Supreme Court applies retroactively to establish that he was convicted for a nonexistent offense.

id. § 2241.

Even if we construe Dixon's filing as a motion for modification of his sentence, 18 U.S.C. § 3582, the district court lacked the authority to entertain the motion. The government did not file a motion to reduce Dixon's sentence and Dixon's motion was filed more than seven days after sentencing. See id. § 3582(b)(2); Fed. R. Crim. P. 35(a), (b); United States v. Morrison, 204 F.3d 1091, 1093 (11th Cir. 2000). Dixon did not identify an amendment to the Sentencing Guidelines that applies retroactively to lower his guideline range, 18 U.S.C. § 3582(c)(2), and the Director of the Bureau of Prisons did not move to reduce Dixon's sentence, id. § 3582(c)(1)(A).

The district court technically erred in its disposition of Dixon's motion. Because the district court denied, rather than dismissed, Dixon's motion, we vacate its order and remand with instructions to dismiss the motion for lack of jurisdiction.

**VACATED AND REMANDED WITH INSTRUCTIONS.**